

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LEONARD MARTINEZ,
Plaintiff,

No.

vs.

CITIMORTGAGE, INC., a successor in interest
by merger to ABN Mortgage Group, Inc.;
DITECH FINANCIAL, LLC, and
SHELLPOINT MORTGAGE SERVICING,
Defendants.

NOTICE OF REMOVAL

Defendant CitiMortgage, Inc. (“CMI”), pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1331, and the Federal Rules of Civil Procedure, hereby removes to this Court the state court action described below. Removal of the action is permitted under 28 U.S.C. § 1441 because this action involves, among other things, a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331. In support of removal, CMI states:

1. On October 25, 2017, Leonard Martinez (“Plaintiff”) filed a Complaint For Violation of the Real Estate Settlement Procedures Act (“RESPA”), Breach of Contract, and Breach of the Covenant of Good Faith and Fair Dealing (“Complaint”) in the case captioned *Leonard Martinez v. CitiMortgage, Inc., as successor by merger to ABN Mortgage Group, Inc., Ditech Financial, LLC, and Shellpoint Mortgage Servicing*, in the Second Judicial District Court of Bernalillo County, New Mexico, Cause No. D-202-CV-2017-7661.

2. Removal of the Complaint is proper because Plaintiff has alleged a claim under RESPA (12 U.S.C. §2605(f)) in Count IV of the Complaint. [Complaint, ¶ 56.]

3. Plaintiff served the Complaint on CMI on November 6, 2017.

4. This Notice of Removal is filed within 30 days of the service of the Complaint and thus is timely under 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6.

5. Rule 1-004(C) NMRA requires that a proof of service be filed with the district court after service of process on defendants. As of the date of filing this Notice, there is no indication in the record on the State Court docket that any of the other defendants to this matter have been served. Accordingly, the consent for removal from the other defendants was not obtained. [§ 1446(b)(2).]

6. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders known by Defendant to be on file with the Second Judicial District Court in the underlying case are attached hereto as **Exhibit 1**. A Civil Cover Sheet is attached hereto as **Exhibit 2**.

7. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district embraces the place where the removed action has been pending.

WHEREFORE, CMI hereby removes this action from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to this Court, pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By: /s/ Justin Breen

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Attorneys for CitiMortgage, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2017, I filed the foregoing using CM/ECF which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Eric N. Ortiz & Associates
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Attorneys for Plaintiff

/s/ Justin Breen

Justin Breen
Attorney for Defendant CMI